

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 E) for Authority to Increase Revenue
Requirements to Recover the Costs to Replace
Steam Generators in Units 1 and 2 of the Diablo
Canyon Power Plant.

Application 04-01-009
(Filed January 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING MOTION FOR PROTECTIVE ORDER**

Concurrent with the filing of this application, Pacific Gas and Electric Company (PG&E) filed a motion for a protective order setting the conditions under which parties may obtain access to computer models, data bases, programs, input data set formats, and energy price forecasts used in support of its testimony.

PG&E used the services of Henwood Energy Services, Inc. (Henwood) in this proceeding. Henwood used its Electric Market Simulation System, ProSym, and MultiSym models to develop energy price forecasts for PG&E. PG&E also used the services of Strategic Decision Group, Inc. (SDG) in this proceeding. SDG used its steam generator spreadsheet model to represent the relationships between technical, economic and regulatory factors related to tube repair and steam generator replacement. PG&E asserts that Henwood and SDG's analysis and conclusions constitute and contain proprietary trade secret information including but not limited to Henwood's energy price forecasts, and Henwood and SDG's models, data inputs and data outputs.

PG&E asserts that the proprietary information includes programs, data bases, software, algorithms, and documentation such as manuals, guides, training materials, and any documents prepared by PG&E that reproduce this information in whole or in part. PG&E requests a protective order that would give parties access to the above information. PG&E also proposes that parties would not be given access to the models, but that it would perform model runs requested by the parties.

Rule 74.3 of the Commission's Rules of Practice and Procedure provides that any party who submits testimony or exhibits in a proceeding that are based in whole or in part on a computer model (sponsoring party) shall provide all parties with: (1) a complete set of input data including a description of its source, (2) documentation sufficient to understand the basic logical processes of the model, (3) a complete set of output files, and (4) a description of the post-processing requirements of the model.¹

Rule 74.4 provides that the sponsoring party shall provide reasonable access to, and an explanation of, the model. The sponsoring party is also required to make the model available to other parties, or to provide requested model runs to other parties.

Rule 74.7 provides that the sponsoring party may file a motion for a protective order to protect material that is confidential, proprietary, or subject to a licensing agreement.

PG&E's request is consistent with the above Rules. The materials related to Henwood's energy price forecasts, and Henwood and SDG's models appear to

¹ Rules 74.1 through 74.7 implement Pub. Util. Code §§ 1821-1822.

be proprietary trade secret information that is not publicly available, and the release of which would cause undue financial harm to Henwood and SDG. Therefore, these materials merit treatment pursuant to a protective order. As a result, I grant the motion and issue a protective order that will govern access by parties to Henwood's energy price forecasts, and to materials related to Henwood and SDG's models used by PG&E in this proceeding. The Commission's staff is not subject to the protective order.² Attached to this Ruling are (a) a protective order and (b) a non-disclosure certificate. I will also require PG&E to maintain a list of all Reviewing Representatives, as defined in the protective order, and make that listing available on an updated basis to the Office of Ratepayer Advocates and all Reviewing Representatives.

PG&E also requests that Henwood and SDG be made parties to this proceeding for the limited purpose of addressing issues that may arise regarding the protective order. PG&E is the applicant in this proceeding and it requested a protective order. It engaged Henwood and SDG to provide services in support of its application. Therefore, PG&E is the appropriate party to address such issues if they arise. As a result, I deny the request.

Therefore, **IT IS RULED** that:

1. The motion of Pacific Gas and Electric Company (PG&E) for a protective order and related non-disclosure certificate is granted to the extent set forth below. In all other respects, it is denied.
2. PG&E shall provide to parties upon request, information describing the operation of the models addressed herein in a manner consistent with Rule 74.3.

² Access to these materials by the Commission staff, including the Office of Ratepayer Advocates, is governed by Pub. Util. Code § 583 and General Order 66-C.

3. Consistent with Rule 74.4, PG&E shall perform runs of the models reasonably requested by the parties.

4. The attached protective order is adopted, and applies to the energy price forecasts prepared by Henwood Energy Services, Inc. (Henwood), materials related to the Electric Market Simulation System, ProSym, and MultiSym models used by Henwood to develop the energy price forecasts, and materials related to the steam generator spreadsheet model used by Strategic Decision Group, Inc. to represent the relationships between technical, economic and regulatory factors related to tube repair and steam generator replacement.

5. The protective order is binding on all parties to this proceeding, except the Office of Ratepayer Advocates.

Dated May 21, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell
Administrative Law Judge

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PROTECTIVE ORDER

1. This Protective Order shall govern access to the Protected Materials identified in the Administrative Law Judge's Ruling adopting this order, or as subsequently designated by the California Public Utilities Commission (Commission), the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the Law and Motion ALJ. This Protective Order is not applicable to the furnishing of information by Pacific Gas and Electric Company (PG&E) to the Commission or its staff (including the Office of Ratepayer Advocates), nor shall it be construed in such a manner as to limit or restrict such furnishing of information.¹ Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Assigned Commissioner, the Assigned ALJ, the Law and Motion ALJ, or the Commission.

¹ Pub. Util. Code § 583 and General Order 66-C are applicable to Commission staff review of protected materials.

2. Definitions - for purposes of this Order:

- (a) The term "Participant" shall mean a person or entity that has entered an appearance as a party in this proceeding.
- (b) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants' Reviewing Representatives, as defined in section 2(c), who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that they have read the Protective Order and agree to be bound by it.
- (c) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate, and who is:
 - (1) a Participant;
 - (2) an employee or other representative of a Participant with responsibility for this proceeding.
 - (3) an expert or an employee of an expert retained by a Participant for the purpose of participating in this proceeding; or
 - (4) a person designated as a Reviewing Representative by order of the Commission, the Assigned Commissioner, or the Assigned ALJ.

Participants are responsible for the actions of their Reviewing Representatives involving Protected Materials.

Notwithstanding section 2(c)(1-4) above, PG&E has the right to refuse to provide a Reviewing Representative access to Protected Materials if grounds exist such that the Participant or the Reviewing Representative could use Protective Materials for commercial or improper usage. If a Participant disagrees with PG&E's refusal to provide Protected Materials, the Participant may seek resolution under the procedures set forth in section 9(a).

3. Protected Materials shall be made available under the terms of the Protective Order only to Participants, and only through their Reviewing Representatives. PG&E

shall maintain an updated list of Reviewing Representatives that shall be made available upon request to the Office of Ratepayer Advocates, Participants, and all Reviewing Representatives.

4. (a) Protected Materials shall remain available to Participants until the date that an order terminating or concluding this proceeding becomes no longer subject to judicial review.

(b) Within 30 calendar days of the date set forth in section 4(a), all Participants' Reviewing Representatives shall return to PG&E all Protected Materials, including notes of Protected Materials and those pages of filings, official transcripts and exhibits in this proceeding that contain Protected Materials. In the alternative and with PG&E's consent, Participants may destroy the Protected Materials in a manner determined by PG&E. Within such time period, each Participant shall also submit to PG&E an affidavit stating that, to the best of its knowledge, all Protected Materials and documents containing Protected Materials have been returned to PG&E or have been destroyed.

5. All Protected Materials shall be maintained in a secure place so that access is limited to Reviewing Representatives.

6. (a) Protected Materials shall be treated as confidential by each Participant and by its Reviewing Representatives in accordance with the certificate executed pursuant to section 7. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding, and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

(b) Reviewing Representatives may make notes of Protected Materials that shall be treated as Protected Materials if the notes disclose the contents of Protected Materials. Reviewing Representatives may not make copies of Protected Materials unless agreed to by PG&E. Any such copies become Protected Materials.

7. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless the Reviewing Representative has first executed a Non-Disclosure Certificate. The original of each Non-Disclosure Certificate shall be provided to PG&E prior to disclosure of any Protected Materials to that Reviewing Representative. Each reviewing representative shall retain a copy of the Non-Disclosure Certificate.

8. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, and no longer meets the definition of Reviewing Representative under section 2(c), that person's access to Protected Materials shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

9. (a) Subject to section 13, the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ, as appropriate, shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ under Resolution ALJ-164 or the Commission's Rules of Practice and Procedure, the parties to the dispute shall meet and confer and use their best efforts to resolve the dispute.

(b) Any Participant who contests the designation of materials as protected shall notify PG&E by specifying in writing the materials whose designation is contested. This Protective Order shall continue to apply to such materials after the notification is made. The Participant may seek resolution of the dispute under the procedures set forth in section 9(a). PG&E shall have the burden of proving that the materials should be protected. If the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ finds that the materials at issue are not entitled to protection, the procedures of section 13 shall apply.

10. All copies of all documents reflecting Protected Materials that are filed with the Commission, or provided to the Commission, parties, Commission staff, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be in sealed envelopes or other appropriate containers endorsed to indicate that they are sealed pursuant to this Protective Order, and marked "PROTECTED MATERIALS."

If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearings in this proceeding, such Participant shall first notify counsel for PG&E, the Assigned Commissioner, and the Assigned ALJ of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Assigned Commissioner or the Assigned ALJ.

11. Nothing in this Protective Order shall be construed as precluding PG&E from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Protective Order shall preclude any Participant from requesting the Commission, Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order.

13. If the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ rules at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for seven (7) business days from the date of the ruling. If, within such period, a party files a rehearing request or an interlocutory appeal on that ruling with the Commission, the materials shall remain protected until seven (7) business days after the final order resolving the question of confidentiality.

14. Contents of Protected Materials or any other form of information that copies, excerpts or summarizes Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order, and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell
Administrative Law Judge

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NON-DISCLOSURE CERTIFICATE

(To be executed by a Reviewing Representative for access to Protected Materials)

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order issued on May 21, 2004, in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signature:
Printed Name
Title:
Representing:
Telephone
E-mail
Date:

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motion for Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated May 21, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.